IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PERSONALIZED USER MODEL, L.L.P., Plaintiff, v. GOOGLE, INC., Defendant.	C.A. No. 09-525 (LPS)
GOOGLE, INC., Counterclaimant, v. PERSONALIZED USER MODEL, L.L.P. and YOCHAI KONIG, Counterclaim-Defendants.	**PUBLIC VERSION**

PUM'S ANSWERING BRIEF IN OPPOSITION TO GOOGLE'S MOTION FOR SUMMARY JUDGMENT ON NON-INFRINGEMENT

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This is Personalized User Model, L.L.P.'s ("PUM's") answering brief in opposition to Google's Motion for Summary Judgment on Non-Infringement (D.I. 423) ("Mot.").

SUMMARY OF ARGUMENT

Contrary to Google's assertion, PUM has presented more than sufficient evidence to establish a *prima facie* case that each of Google's Accused Products meets the "document" limitations of the asserted claims, and also estimates parameters and probabilities, as those terms have been construed by the Court. This evidence includes the 345 pages of expert reports of PUM's expert (Dr. Michael Pazzani) and the hundreds of exhibits cited therein, numerous admissions by Google in its documents and from its witnesses, and the testimony of Google's own experts. As established below, this evidence is more than sufficient to preclude summary judgment, particularly where, as here, all reasonable inferences must be drawn in PUM's favor as the non-movant. Accordingly, Google's Motion should be denied.[1]

STATEMENT OF FACTS

Google submitted five factual declarations to support its Statement of Undisputed Facts (D.I. 425, 426, 427, 428, and 429) and set forth additional facts in its Motion. (Mot. at 1-4.) PUM, however, disputes many of these so-called undisputed facts. [redacted]

[1] Google's Motion for Summary Judgment on U.S. Patent No. 7,320,031 ("'031 patent") also should be denied. PUM withdrew the '031 patent from the case on October 11, 2010, pursuant to the Court's September 8, 2010 Order (D.I. 88) requiring PUM to reduce the number of claims to 15. Google cannot convert that voluntary withdrawal, done without prejudice, into a finding of non-infringement. *See Streck, Inc. v. Research & Diagnostic Sys., Inc.*, 665 F.3d 1269, 1281 (Fed. Cir. 2012) (affirming that district courts lack jurisdiction over unasserted claims).

[redacted] These and other disputed facts discussed in the Argument below require that Google's Motion be denied.

ARGUMENT

I. STANDARDS FOR SUMMARY JUDGMENT AND INFRINGEMENT.

Infringement is a question of fact. *See Caterpillar Inc. v. Deere & Co.*, 224 F.3d 1374, 1379 (Fed. Cir. 2000). To obtain summary judgment, Google must demonstrate the absence of any genuine issue of material fact. Fed. R. Civ. P. 56(c). In deciding whether such a genuine issue exists, the Court must view the evidence in light most favorable to the nonmovant and draw all reasonable inferences in the nonmovant's favor. *See Pennsylvania Coal Ass'n v. Babbitt*, 63 F.3d 231, 236 (3d Cir. 1995). The Court may not resolve any factual disputes or make credibility determinations. *Pichler v. Unite*, 542 F.3d 386-87 (3d Cir. 2008).

[redacted]

II. THE EVIDENCE ESTABLISHES THAT EACH OF THE ACCUSED PRODUCTS MEETS THE "DOCUMENT" LIMITATIONS.

A. PUM Has Provided Sufficient Evidence To Establish That Google Search Analyzes And Identifies Properties Of Documents.

[redacted] This evidence establishes that Google analyzes documents and identifies their properties.[6]

[4] Exhibit numbers refer to the exhibits attached to the Expert Report of Pazzani, which are attached to Exhibit A to the Declaration of Pazzani in support of this Opposition.

[5] Citations to Pazzani's First Report (Ex. A) and Supplemental Report (Ex. B) also include citations to the evidence referred to therein, including the exhibits referenced in the cited paragraphs.

[redacted]

[redacted] Google focuses on the claim element "updating user-specific data files," which the Court construed to include "a set of documents associated with the user." (D.I. 348.) Google attempts to read out the word "associated" from the construction by arguing that the documents themselves must be stored with the user. There is no such requirement; nor does it make any sense. This would require that each Google user (i.e., cookie or account) have the actual documents stored as opposed to storing a docID, pointer, or URL that associates the actual document with the user. This Court rejected Google's similar argument in the context of user models (namely, that each user must have his or her personal learning machine resulting in the same algorithm being stored millions or billions of times—once for each user—in Google's system). Here, according to Google, the same document would have to be stored over and over again for multiple users. There is no such requirement in the asserted claims, however.

To the extent the Court were inclined to consider Google's new argument, the patents are clear that a document (and a set of documents) may be associated with a user via an identifier. For example, Figure 14 of the '040 patent (Bennett Decl. Ex. A) associates a document with a user using a "Document ID." As the description of Figure 14 explains, the recently accessed buffer includes information about the document itself and the user's interaction with the document. (*See* '040 patent, 22:27-30.) One possible implementation of a buffer is Fig. 14, but any suitable structure may be used. (*Id.* at 22:31-33.) The buffer contains, for each viewed document, a document identifier (*e.g.*, its URL) as well as other user-specific properties. (*Id.* at

33-43.[7])

[redacted]

Drawing all reasonable inferences in favor of PUM, there can be no question that PUM has presented sufficient evidence for a jury to conclude that Google's accused products contain a set of documents *associated* with the user and that such set is updated. At a minimum, this is a battle of experts that cannot be resolved without a trial. *See Tarkus Imaging Inc. v. Adobe Sys.,*

[7] *See also* Figs. 4B and 15A associating web sites with the user through a site ID/Name. Given the dynamic nature of the Internet, in which individual documents are constantly being added and deleted, a site is defined through the first backslash (after the www). ('040 patent, 12:30-40.)

Inc., Case No. 10-63-LS, 2012 WL 2175788 (D. Del. June 14, 2012) (denying summary judgment because issues present a "battle of the experts" that is not amenable to resolution prior to the presentation of evidence.)

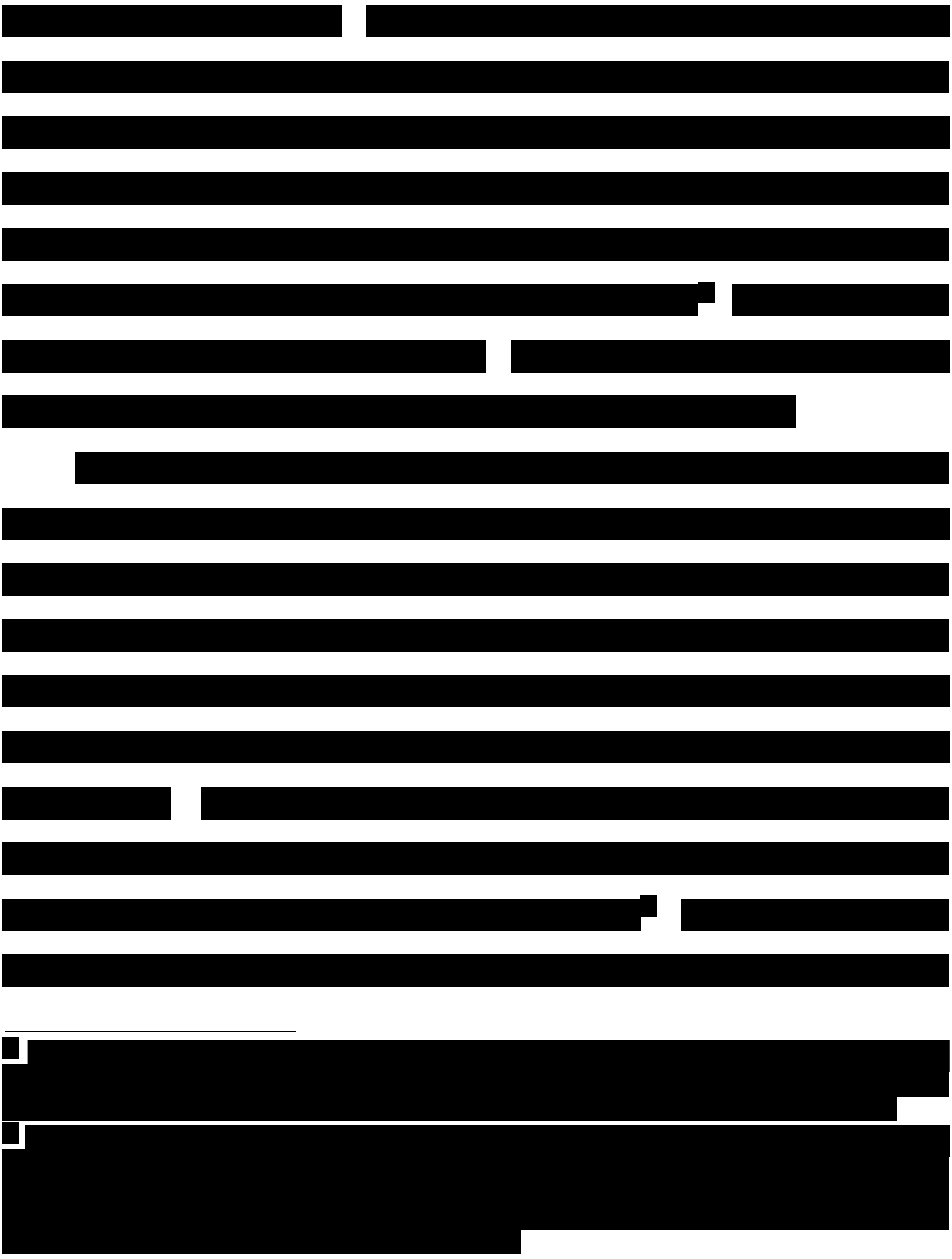
Google's lack-of-equivalence argument is also logically flawed. Although acknowledging that equivalence is measured by whether the substituted element matches the function, way, and result of the claimed element,[8] Google's analysis incorrectly focuses on the claim as a whole. (Mot. at 6). PUM asserts the doctrine of equivalence with respect to, for example, limitations in the '276 patent requiring retrieving or presenting documents to a user. (Ex. A, ¶ 464). [redacted] The doctrine of equivalents also creates factual issues making summary judgment improper.

B. Advertisements Are "Documents" Under The Court's Construction.

The Court construed "document" to mean "an electronic file including text or any type of media." (D.I. 348, ¶ 9.) Google's summary judgment argument depends upon an extremely narrow and incorrect interpretation of the word "file" in the Court's construction. [redacted]

[8] *See Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 30 (1997).

[redacted]



[redacted]

Drawing all inferences in favor of PUM, PUM has presented sufficient evidence for a jury to conclude that Google's advertisements satisfy the document limitation of the claims. At a minimum, this is a battle of experts that cannot be resolved without a trial. *See Tarkus Imaging Inc.*, 2012 WL 2175788.

C. Google News And Google Portrait Functionality Meets The "Document" Limitations.

Here, Google merely rehashes its earlier failed arguments. [redacted]

III. THE ACCUSED PRODUCTS ESTIMATE PROBABILITIES.

[redacted]

[redacted]

In sum, PUM has presented more than sufficient evidence to permit a jury to conclude that the "estimating probability" claim elements are met by Google's Accused Products. At a minimum, this is a battle of experts that cannot be resolved without a trial.

IV. THE ACCUSED PRODUCTS ESTIMATE PARAMETERS.

[redacted]

[redacted]

[redacted]

CONCLUSION

Summary judgment should be denied. As set forth above, PUM presented abundant and compelling evidence that would enable a jury to find that the accused functionalities are present in each of the Accused Products, particularly where, as here, all inferences must be drawn in PUM's favor.

[redacted]

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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered participants.

Additionally, I hereby certify that true and correct copies of the foregoing were caused to be served on January 14, 2013, upon the following individuals in the manner indicated:

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